

MELVIN L. TATUM, JR.
Claimant

TRAILMOBILE TRAILER, L.L.C.
Respondent

ZURICH INSURANCE COMPANY
Insurance Carrier

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ORDER

Respondent appeals the May 18, 2001, preliminary hearing Order of Administrative Law Judge Pamela J. Fuller. In the Order, claimant was awarded medical treatment with Dr. Philip Mills until further order or until certified as having reached maximum medical improvement. Respondent contends the condition for which claimant seeks treatment is not related to the injury suffered on August 31, 1999, and, therefore, did not arise out of and in the course of claimant's employment with respondent. Respondent further contends claimant did not timely notify respondent of the alleged injuries. Additionally, respondent argues the Administrative Law Judge erred in appointing Dr. Mills as the authorized treating physician without a finding that J. E. Harrington, D.O., was unsatisfactory and without allowing respondent to submit a list of the names of three health care providers to provide treatment.

- (1) Did claimant suffer accidental injury on August 31, 1999, to his right wrist?
- (2) Did claimant's right wrist injury arise out of and in the course of his employment with respondent?
- (3) Did claimant provide timely notice of the right wrist accident?
- (4) Did the Administrative Law Judge err in ordering Dr. Mills as the treating physician without finding that Dr. Harrington was

unsatisfactory and without allowing respondent the opportunity to provide a list of three health care providers from which claimant could choose pursuant to K.S.A. 1999 Supp. 44-510(c)(1)?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented, the Appeals Board finds that the Order of the Administrative Law Judge should be reversed.

Claimant suffered accidental injury on August 31, 1999, when his right arm became trapped between a trailer and an air jack. Claimant was referred for treatment to orthopedic surgeon J. E. Harrington, D.O. Dr. Harrington placed claimant's arm in a splint, provided pain medication and ordered physical therapy. Claimant was returned to work with restrictions not to use the right upper extremity. Claimant returned to Dr. Harrington on September 10, 1999. At that time, claimant alleged pain in his forearm and pain in the right shoulder. Dr. Harrington was unable to account for claimant's symptoms either from the history or the physical examination. Dr. Harrington returned claimant to work with specific lifting restrictions. Claimant was rescheduled for an appointment on September 20, 1999. On that date, Dr. Harrington was advised that claimant's complaints of pain were limited to the right elbow. Claimant had been working light duty as instructed. Dr. Harrington had ordered a bone scan from Southwest Medical Center, which was negative in the mid forearm region.

Claimant returned to Dr. Harrington on October 11, 1999, at which time he described a new injury when he fell at work on October 4, 1999, striking his elbow and forcing him once again to go to the emergency room. Claimant had complaints of swelling of the right elbow and pain.

Claimant was referred for a CT scan in order to rule out the possibility of bone chips in the elbow. The CT scan was later read as being negative. Dr. Harrington released claimant on October 22, 1999, to return to regular duties with no permanent disability and no restrictions.

Dr. Harrington next saw claimant on October 17, 2000, and then again on October 20, 2000. At that time, Dr. Harrington reviewed nerve conduction studies performed on claimant and diagnosed bilateral carpal tunnel syndrome. While Dr. Harrington did not believe the carpal tunnel syndrome was related to the earlier traumatic injury, he did feel that claimant's physical activities at work could have caused claimant's problems. However, it is significant in this instance the E-1 Application For Hearing filed alleges an accidental injury on August 31, 1999. No amendment to the E-1 was ever filed, and the record is unclear as to whether additional E-1's were filed for the more recent injury in October of 1999 or for a series of microtraumas as discussed by

claimant at the preliminary hearing. Claimant's attorney did discuss the possibility of filing additional claims, but this record contains no indication of that ever having been done.

Claimant was referred for an evaluation to Pedro A. Murati, M.D., on February 6, 2001. Dr. Murati examined claimant, diagnosing right moderate carpal tunnel syndrome, right ulnar cubital syndrome and right elbow pain status post fracture of the right radial head. Dr. Murati also testified that the CT scan of the right elbow from October 1999 revealed a chip at the acromion tip which was not read earlier.

Claimant proceeded to preliminary hearing on May 9, 2001, requesting additional treatment for his carpal tunnel symptoms. Dr. Murati, in his report, does not give an opinion regarding the cause of claimant's right upper extremity carpal tunnel syndrome. Dr. Harrington states that the carpal tunnel syndrome, while it may have come from repetitive activities, did not come from the specific trauma of August 31, 1999.

In workers compensation litigation, the burden of proof is on claimant to prove his entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 1999 Supp. 44-501 and K.S.A. 1999 Supp. 44-508(g). In this instance, the Appeals Board finds claimant has failed to prove a connection between the May of 2001 symptoms with the injury suffered August 31, 1999. The Appeals Board, therefore, finds that claimant has not proven a connection between the claimant's carpal tunnel syndrome and the August 31, 1999, accident. Therefore, the Order of the Administrative Law Judge, granting claimant medical treatment, is reversed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Pamela J. Fuller dated May 18, 2001, granting claimant medical treatment, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of August 2001.

BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, Kansas
Terry J. Malone, Dodge City, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director